

COPY OF TRANSCRIPT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

W.A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA)

Plaintiffs,)

vs.)

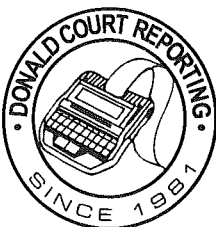
4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al.,)

Defendants.)

VIDEOTAPED DEPOSITION OF KIRK HOUTCHENS

Taken at the law offices of Mitchell, Williams,
Selig, Gates & Wooyard, 5414 Pinnacle Point Drive, Suite
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1 technically trained in soil scientists, that kind of
2 thing. It would be speculation --

3 Q. (Mr. Riggs continued.) Okay.

4 A. -- on my part.

5 Q. Does anyone in the company know more than you do
6 about the -- the application of poultry waste to -- to
7 pasture land in a safe way?

8 MR. McDANIEL: Object to the form.

9 A. No, there isn't.

10 Q. (Mr. Riggs continued.) In your experience, would
11 you agree that farmers are encouraged to apply poultry
12 waste to pasture lands for its nitrogen need even though
13 those soils would have no need for more phosphorus?

14 MR. McDANIEL: Object to the form.

15 A. No. We don't. Our -- our growers are using their
16 nutrient management plans, and those are written based on
17 phosphorus index -- indexes.

18 Q. (Mr. Riggs continued.) Before your nutrient
19 management plans, would you say it's been true
20 historically for farmers to apply poultry waste for
21 nitrogen needs rather than -- or even though there were no
22 phosphorus needs in that soil?

23 MR. McDANIEL: Object to the form.

24 A. You know, it was -- your know, our plan's written by
25 both states were written based on nitrogen.

1 Q. (Mr. Riggs continued.) I'm referring to the period
2 of time when Peterson was in the poultry business before
3 either state adopted nutrient management plan regulations.
4 Was it typically true of farmers to apply poultry waste
5 for nitrogen needs without regard to phosphorus needs?

6 MR. McDANIEL: Object to the form.

7 A. Like I said earlier, David, the growers applied
8 poultry litter to their pasture land, and it would be more
9 on the nitrogen needs.

10 Q. (Mr. Riggs continued.) Okay.

11 A. Because at the time we weren't -- we weren't using
12 the phosphorus on this.

13 Q. In fact, wasn't that one of the reasons it became
14 necessary to have nutrient management plans, because there
15 were so many people applying poultry waste for the
16 nitrogen needs without regard to the phosphorus buildup in
17 the soil?

18 MR. McDANIEL: Object to the form. I don't
19 see where you've asked Peterson Farm to take a position on
20 when nutrient management plans came into existence.

21 Q. (Mr. Riggs continued.) Do you have an opinion about
22 that?

23 MR. McDANIEL: He can answer it personally
24 but not as a representative of Peterson Farms, if he
25 knows.

1 A. I don't know why that evolved from nitrogen to
2 phosphorus.

3 Q. (Mr. Riggs continued.) You don't know why it became
4 necessary for either state to try to put into effect
5 nutrient management plans?

6 MR. McDANIEL: Same objection. He's not
7 speaking for Peterson Farms, but you can answer
8 personally, if you know.

9 A. I don't know.

10 Q. (Mr. Riggs continued.) Does anyone at Peterson
11 Farms know that, to your knowledge?

12 A. No, not that I'm aware of.

13 Q. Does Peterson Farms know whether or not poultry
14 waste has been applied to land in the Illinois River
15 Watershed for nitrogen purposes, even though it was being
16 applied to soils which did not need more phosphorus?

17 MR. McDANIEL: Object to the form.

18 A. No, I don't believe so.

19 Q. (Mr. Riggs continued.) Does Peterson Farms have any
20 interest in knowing that?

21 A. Yes, they would.

22 Q. Have you done anything to find out whether that's
23 occurring?

24 MR. McDANIEL: Object to the form.

25 A. We --

1 Q. Okay. Mr. Mullikin says in this letter to the
2 company president in 1998, "In the past few months I've
3 been exposed to a wealth of information and individuals in
4 the poultry industry. I would like to share with you some
5 of my views on where we are, and where we may be headed on
6 the poultry litter issue.

7 "I personally have no opinion about whether or not
8 the intergrator or the grower owns the litter. I do feel
9 without any doubt that as time passes, we the intergrator
10 will be found to liable for it and the affect it has on
11 our environment."

12 Do you know if, as a result of this written opinion
13 expressed to the president by Mr. Mullikin, whether or not
14 there was within the company around that time a discussion
15 about the contents of that statement?

16 A. No, I don't.

17 Q. Do you remember any discussions within the company
18 about who should take responsibility for the litter, and
19 to use Mr. Mullikin's words, the effect it has on the
20 environment?

21 MR. McDANIEL: Object to the form.

22 A. No, I don't.

23 Q. (Mr. Riggs continued.) Were you personally ever
24 involved in any discussions about who should take
25 responsibility for the poultry litter produced by the

1 company's chickens?

2 A. No, I didn't.

3 Q. Do you know if any of the policies of the company
4 changed with respect to the question of who should take
5 responsibility for the litter produced by its chickens as
6 a result of this memorandum by Mr. Mulligin to president
7 Henderson?

8 A. No, I don't.

9 Q. Let me ask you to look at the last paragraph of the
10 Mullikin memorandum. It says, "Dan," meaning Dan
11 Henderson, "I feel the direction Peter Farm" -- "Peterson
12 Farms and all integrators would best be served to focus
13 its resources towards, would be alternative uses. Things
14 such as using litter as bedding, feed, fertilizer, and
15 fuel are just a few of the uses I've found some
16 information on. Each of these uses has its own set of
17 benefits and short-comings. But they all address the
18 environmental need to stop applying litter to our local
19 pasture lands."

20 Now, that memo was written over nine years ago, and
21 he said in the last words of the memo, I'm quoting,
22 "integrators would be best served to focus their resources
23 towards all" -- "addressing the environmental need to stop
24 applying litter to our local pasture lands."

25 What has Peterson Farms done since that time to

1 address the environmental need to stop applying litter to
2 local pasture lands?

3 MR. McDANIEL: Object to the form.

4 A. Well, I don't know -- personally, I wasn't involved
5 of anything as a result of this memo. I just -- I know of
6 all the things that have been done since '97 to present.

7 Q. (Mr. Riggs continued.) To stop applying litter to
8 local pasture lands to address environmental needs?

9 MR. McDANIEL: Object to the form.

10 A. No, I don't.

11 Q. (Mr. Riggs continued.) You don't know of anything
12 the company's done in response to --

13 A. In response to this memo?

14 Q. -- Mr. Mullikin's statement that the company'd be
15 best served to address the environmental need to stop
16 applying litter to local pasture land?

17 MR. McDANIEL: Object to the form.

18 A. No, not directly related to this memo, I don't. I
19 know of things we've done since --

20 Q. (Mr. Riggs continued.) Okay.

21 A. -- '97, but I can't say it was because of this memo.

22 Q. Okay.

23 A. I just --

24 Q. What -- what things have you done which would
25 address the environmental need to stop applying litter to

1 local pastures?

2 MR. McDANIEL: Object to the form.

3 A. There again, Peterson Farms requires that its
4 growers have nutrient management plans through their --
5 the appropriate state agencies, and I know that is one
6 thing. Now, whether that allows them to apply litter on
7 -- on their land or not would also -- it just depends on
8 their plan, what their nutrient plan is and their soil
9 samples.

10 Q. (Mr. Riggs continued.) But this says not to apply
11 in any particular way but to stop applying it, doesn't it?
12 He says, "There's an environmental need to stop applying
13 litter to local pasture lands," doesn't he?

14 A. Looks like he says that the alternative methods
15 address the environment need to stop applying litter, but
16 this, basically, is leading on -- I don't -- just reading
17 it, I'm not trying to interpret what he was thinking when
18 he wrote it, but that's what it looks like to me.

19 Q. Let me hand you Exhibit 10, another memorandum from
20 Mr. Mullikin.

21 (Wherein, Plaintiff's Exhibit 10 was marked.)

22 This is about three months later, I guess. It's
23 July 24th, 1998. Sent to Dan Henderson, Gene Wilmoth,
24 Sean Holcombe, Rodney Dunnam, and Janet Wilkerson. Let me
25 first ask you who is Gene Wilmoth?

1 A. Gene Wilmoth was our executive VP of production.

2 Q. Is that the job you now have? Is that --

3 A. I'm just like a production manager.

4 Q. Okay.

5 A. He's retired.

6 Q. Okay. Sean Holcombe. Who is he?

7 A. He was a former breeder/manager.

8 Q. Rodney Dunnam?

9 A. Rodney has had several capacities in the company,
10 and at that time I'm not sure what his position was. It
11 might have been buy -- grain buyer.

12 Q. Okay. Was Dan Henderson still president in July of
13 '98?

14 A. Yes, sir.

15 Q. This memo does deal specifically with the Spavinaw
16 Eucha Watershed. Let me ask you, have you seen it before?

17 A. No, I haven't.

18 Q. Okay. In the middle paragraph Mr. Mullikin says,
19 quote, We need to find and develop new plans for waste
20 management that work for our growers. The meeting was
21 helpful for only two growers, of which one was ours. Out
22 of 37 fields, 31 had too high of a phosphorous level,
23 which was anything above 300 pounds. This meant that
24 those who were in that range couldn't fully develop their
25 plan or put any more litter on their fields. Our growers

1 feel as though they have nowhere left to turn."

2 Do you understand what Mr. Mullikin was referring to
3 in those comments, this 31 out of 37 fields had too much
4 phosphorous?

5 MR. McDANIEL: Object to the form.

6 A. I believe he's saying that 37 out of 31 were above
7 300 pounds.

8 Q. (Mr. Riggs continued.) Okay.

9 A. But I'm not aware at this time, you know -- you
10 know, what his -- what he was con -- you know, referring
11 to as far as the --

12 Q. He does say the phosphorous levels were too high to
13 allow those fields to accommodate any more poultry litter,
14 doesn't he?

15 A. I believe that's what he's writing in this.

16 Q. Says they couldn't fully develop their plan or put
17 any more litter on their fields. Correct? Thirty-one out
18 of 37. Is that your understanding of the memo?

19 A. Yes.

20 Q. Does Peterson Farms have any evidence which would
21 show or even suggest that a survey of fields with the
22 Illinois River Watershed would produce substantially
23 different results?

24 MR. McDANIEL: Object to the form.

25 A. Different results from what?

1 Q. (Mr. Riggs continued.) This was a survey testing 37
2 fields in the Spavinaw Eucha Watershed, and 31 had too
3 much phosphorus to accommodate any more litter. I'm
4 asking if Peterson Farms has any evidence which would show
5 or suggest that a survey of fields in the Illinois River
6 Watershed would produce substantially different results.

7 MR. McDANIEL: Object to the form.

8 A. No, we don't have any evidence of that.

9 Q. (Mr. Riggs continued.) Are the practices regarding
10 how poultry litter is managed and utilized any different
11 for Peterson Farms' growers in the Illinois River
12 Watershed from the practices of its growers in the Eucha
13 Spavinaw Watershed?

14 MR. McDANIEL: Time frame? Can you specify
15 a time frame?

16 MR. RIGGS: Well, it says currently.

17 MR. McDANIEL: Okay.

18 A. Currently?

19 Q. (Mr. Riggs continued.) Yeah.

20 A. Yeah, the practices would be different because of
21 the Tulsa settlement.

22 Q. The use of poultry litter is more restrictive in the
23 Eucha Water -- Spavinaw Watershed than the Illinois
24 Watershed at present. Right?

25 MR. McDANIEL: Object to the form.

1 A. It's probably not in Oklahoma.

2 Q. (Mr. Riggs continued.) Well, how is it different
3 then? You said it was different because of that
4 settlement, so how is it different?

5 A. Well, what's different is we use a nutrient
6 management team from -- the -- a judge-appointed team, the
7 Eucha Spavinaw Watershed. We don't use the NRCS. That's
8 how it's different.

9 Q. And does that result in more or less litter being
10 applied in the Eucha Spavinaw Watershed for the available
11 pasture land than the Illinois River Watershed?

12 MR. McDANIEL: Object to the form.

13 A. I believe that there may be a slight difference in
14 the phosphorus indexes, but it's pretty tough in both
15 Arkansas and Oklahoma, so --

16 Q. Do you know --

17 A. -- you know, everyone is -- whether it's in the
18 Spavinaw Eucha or in the Illinois in Arkansas or the
19 Illinois in Oklahoma, the -- the main difference is, is
20 our growers in the Arkansas -- not in the Arkansas, but
21 anywhere in the Spavinaw Eucha Watershed, they have people
22 come directly from the Spavinaw Eucha nutrient management
23 team.

24 Q. So are you saying there's more oversight of those
25 litter spreading practices in the Eucha Spavinaw Watershed

1 than in the Illinois Watershed?

2 A. No, I'm not saying there is at all.

3 Q. Is there --

4 A. Just different oversight.

5 Q. Okay. What is the oversight in the Illinois River
6 Watershed of that practice?

7 A. That would be the state -- the -- the Oklahoma
8 Department of Agriculture, the Oklahoma DEQ, the Oklahoma
9 NRCS, the Arkansas DEQ, the Arkansas NRCS. You would have
10 to talk to them.

11 Q. So tell me again. I'm sorry. I'm just not
12 understanding what you're saying the difference is between
13 the two watersheds as a result of the settlement. What
14 things are happening in the Eucha Spavinaw Watershed
15 regarding the application -- land application of poultry
16 litter that are -- are not happening in the Illinois River
17 Watershed?

18 MR. McDANIEL: Object to the form.

19 A. The difference is, is that when a grower wants to
20 spread his litter or he's considering spreading his litter
21 in any of the watersheds, the difference is in our -- in
22 the Spavinaw Eucha, a court-appointed or a group, someone
23 else comes out and samples his soil versus someone from
24 either the Department -- NRCS from Arkansas or Oklahoma.

25 Q. (Mr. Riggs continues.) Well, that does not happen

1 in the Illinois River Watershed, does it? The growing
2 samples his own fields. Correct?

3 A. No, that's not correct.

4 Q. Who does the sampling in the Illinois River
5 Watershed?

6 A. An employee from the NRCS.

7 Q. In every instance that's the case?

8 A. I believe. I'm not -- you know, we don't sample
9 their fields for them, we just expect them to, you know,
10 comply by state and federal laws.

11 Q. Do you know who actually pulls the samples that are
12 sent to the lab to be analyzed?

13 A. I don't.

14 Q. Let's say the Illinois River Watershed currently.

15 A. Arkansas? Oklahoma? You know, it's got to be very
16 specific because they -- depending on what the state laws
17 require they're recommended --

18 Q. You're saying it's your opinion or belief that the
19 state employees or agents of the state in both states
20 actually pull the soil samples from the fields and not the
21 grower himself?

22 MR. McDANIEL: Object to the form.

23 A. I don't know for sure, but, you know, I'm thinking
24 that, you know, depending on whether you're in Oklahoma or
25 Arkansas, I'm not sure they allow the growers to pull